

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 3:13-cv-04115-WHO

IN RE KOREAN RAMEN ANTITRUST
LITIGATION

This Document Relates to:

ALL ACTIONS

VIDEOTAPED DEPOSITION OF
SANG-HUN LEE
SUNDAY, OCTOBER 1, 2017

DATE TAKEN:

REPORTED BY: PAUL J. FREDERICKSON, CCR, CSR

1 [Pause for interpretation.]

2 A. Yes, it does.

3 Q. And does this document have a
4 complete and accurate account of your
5 publications from the last ten years as of
6 today?

7 [Pause for interpretation.]

8 A. There wasn't anything in the last
9 ten years, so -- which is the reason why there
10 isn't anything that isn't listed here. So in
11 that regard, it is accurate.

12 Q. Have you ever published anything
13 about the Korean Fair Trade Commission?

14 [Pause for interpretation.]

15 A. I have not.

16 Q. And for the rest of today, I'm
17 just going to refer to the Korean Fair Trade
18 Commission as the KFTC.

19 Do you understand that?

20 [Pause for interpretation.]

21 A. Yes.

22 Q. And have you ever published
23 anything about the Korean Monopoly Regulation
24 and Fair Trade Act?

25 [Pause for interpretation.]

1 A. I haven't.

2 Q. And for the rest of today, I'm
3 going to refer to the Korean Monopoly
4 Regulation and Fair Trade Act as the Fair Trade
5 Act.

6 Do you understand that?

7 [Pause for interpretation.]

8 A. Could you repeat the acronym
9 again?

10 Q. The Fair Trade Act.

11 A. Oh, okay.

12 Yes.

13 Q. Have you ever published anything
14 about document preservation obligations under
15 Korean law?

16 [Pause for interpretation.]

17 A. I haven't.

18 Q. And have you ever published
19 anything about document preservation
20 obligations under US law?

21 [Pause for interpretation.]

22 A. I haven't.

23 Q. And does this document have a
24 complete and accurate account of your teaching
25 experiences as of today?

1 [Pause for interpretation.]

2 A. Yes, it does.

3 Q. Mr. Lee, what year did you pass
4 the Korean bar exam?

5 [Pause for interpretation.]

6 A. That was in 1987.

7 Q. This document says that you were
8 admitted to the Korean Bar Association in 1993.
9 Is that inaccurate?

10 [Pause for interpretation.]

11 A. Oh, I see that. This is -- this
12 will not be accurate.

13 Q. Okay.

14 Mr. Lee, do you speak English?

15 [Pause for interpretation.]

16 A. A little. I do.

17 Q. Would you consider yourself fluent
18 in spoken English?

19 [Pause for interpretation.]

20 A. I wouldn't.

21 Q. Can you read English?

22 [Pause for interpretation.]

23 A. To a certain degree, yes.

24 Q. Would you consider your
25 proficiency at a professional level?

1 [Pause for interpretation.]

2 A. No, not to that extent. To a
3 certain degree, I can read English.

4 Q. And can you write in English?

5 [Pause for interpretation.]

6 A. Likewise, a little.

7 Q. So you would not consider that to
8 be at a professional level; correct?

9 [Pause for interpretation.]

10 A. That is correct.

11 Q. Mr. Lee, you have an LLM degree
12 from Duke University School of Law; correct?

13 [Pause for interpretation.]

14 A. That's right.

15 Q. And how long were you at Duke?

16 [Pause for interpretation.]

17 A. One year.

18 Q. What type of courses did you take
19 in your LLM program?

20 [Pause for interpretation.]

21 A. There were many things.
22 Intellectual property rights, antitrust law,
23 enterprise-related laws, among others.

24 Q. And was the antitrust law course
25 pertaining to US antitrust law?

1 [Pause for interpretation.]

2 A. It was.

3 Q. Okay.

4 Did you study any specialized
5 field of law while pursuing your LLM degree?

6 [Pause for interpretation.]

7 A. I didn't.

8 Q. So other than your time at Duke,
9 did you receive any other education or training
10 in US law?

11 [Pause for interpretation.]

12 A. I didn't.

13 Q. Did you ever receive any education
14 or training in US discovery rules?

15 [Pause for interpretation.]

16 A. I didn't.

17 Q. And did you ever receive any
18 education or training in US document
19 preservation obligations?

20 [Pause for interpretation.]

21 A. I didn't.

22 Q. Do you have any other experience
23 with US law?

24 [Pause for interpretation.]

25 A. I don't.

1 Q. Mr. Lee, you are currently in
2 private practice; correct?

3 [Pause for interpretation.]

4 A. That is correct.

5 Q. Okay.

6 And have you ever represented any
7 clients in connection with an investigation by
8 the KFTC?

9 [Pause for interpretation.]

10 A. I have not.

11 Q. And have you ever represented any
12 clients in litigation against the KFTC?

13 [Pause for interpretation.]

14 A. I haven't.

15 Q. Have you ever represented any
16 clients in an administrative proceeding?

17 [Pause for interpretation.]

18 A. Yes, I have a number of those
19 cases.

20 Q. How many cases?

21 [Pause for interpretation.]

22 A. I wouldn't be able to give you an
23 exact number in that regard, but approximately
24 I would think ten more or less.

25 Q. Can you name the clients you

1 issue in that case?

2 [Pause for interpretation.]

3 A. No, not at all.

4 Q. Have you ever represented the
5 KFTC?

6 [Pause for interpretation.]

7 A. I haven't.

8 Q. Have you ever acted as a
9 consultant for the KFTC?

10 [Pause for interpretation.]

11 A. I haven't.

12 Q. And when you were presiding as a
13 judge, did you -- strike that.

14 When you were a judge, did you
15 preside over any case in which the KFTC was a
16 party?

17 [Pause for interpretation.]

18 A. To my recollection, I don't think
19 there was any case in which the KFTC was a
20 party.

21 Q. Do you have any other experiences
22 with KFTC investigations?

23 [Pause for interpretation.]

24 A. Personally I am very much
25 interested in the laws and regulations

1 involving the KFTC and the cases involving
2 KFTC, so I have been studying up on those
3 issues. And when I was working -- when I was
4 serving as a judge, there was a research
5 institute that would be involved in laws
6 involving enterprises, and in association with
7 that institute, I have worked together with the
8 members of the institute regarding the
9 KFTC-related laws.

10 Q. So is it fair to say that you had
11 an academic interest in KFTC?

12 [Pause for interpretation.]

13 A. It is.

14 Q. But you don't have any experiences
15 or involvement with the KFTC investigation;
16 correct?

17 [Pause for interpretation.]

18 A. That's correct.

19 Q. Have you ever represented any
20 clients in matters involving the Fair Trade
21 Act?

22 [Pause for interpretation.]

23 A. Not to my recollection.

24 Q. Did any matters in which you
25 served as counsel ever involve document

1 preservation obligations under Korean law?

2 [Pause for interpretation.]

3 A. Under the Korean criminal law,
4 there is a crime that is associated with the
5 destruction of evidence, and this would be
6 applicable to both criminal cases as well as
7 civil cases. And of the cases that I've worked
8 on, there were some cases that were involved in
9 that regard.

10 MS. YU: Madam Interpreter, did he
11 say civil cases?

12 THE INTERPRETER: Uh-huh.

13 The way I heard it is --

14 [Pause for interpretation.]

15 THE INTERPRETER: Okay. That's
16 what I heard.

17 So the civil cases, that part
18 would be withdrawn.

19 MS. YU: Okay. Could you
20 restate -- could you restate what you
21 meant?

22 MS. CHO: Minae, why don't you
23 re-ask the question.

24 MS. YU: Can you reread the
25 question?

1 [Discussion.]

2 BY MS. YU:

3 Q. Did any matters in which you
4 served as counsel ever involve document
5 preservation obligations under Korean law?

6 [Pause for interpretation.]

7 A. There were several cases that I
8 worked on that involved the crime of
9 destruction of evidence in -- in criminal
10 cases, in some criminal cases that I worked on.

11 Q. Okay.

12 So your experiences in that regard
13 involved criminal proceedings; correct?

14 [Pause for interpretation.]

15 A. That's correct.

16 Q. How many cases were you involved
17 in?

18 [Pause for interpretation.]

19 MS. CHO: Objection, vague.

20 MS. YU: I'll rephrase that
21 question.

22 BY MS. YU:

23 Q. How many cases were you involved
24 in in which document preservation was an issue?

25 [Pause for interpretation.]

1 A. I can't remember the exact number,
2 but I believe five or six approximately.

3 [Pause for interpretation.]

4 Q. And can you name any of the
5 clients you represented in those cases?

6 A. The most recent one that I
7 handled, the client's name was Jae Bong Noh.

8 Q. Any others?

9 [Pause for interpretation.]

10 A. Other than that, we're talking
11 about some years ago, so I wouldn't remember to
12 the extent of exact name.

13 Q. Were there any corporate clients
14 that you represented in which document
15 preservation was an issue?

16 And this is a criminal case;
17 correct?

18 [Pause for interpretation.]

19 A. And the name that I just
20 mentioned, Mr. Jae Bong Noh, he's a -- one of
21 the executive members of a big enterprise, a
22 Korean company, and before investigation by the
23 prosecution, the -- the alleged crime was that
24 he replaced all of the PCs of the associates
25 who were involved, and his indictment was

1 construction of -- on the account of
2 destruction of evidence. And it's currently --
3 the trial is currently ongoing.

4 Q. And I apologize. I just realized
5 that I asked the question before the --
6 Madam Interpreter had an opportunity to
7 interpret his last response. Okay.

8 [Pause for interpretation.]

9 A. Yes, it is.

10 Q. So the other cases in which you
11 were involved that involved a document
12 preservation issue, do you recall what that
13 case was about?

14 [Pause for interpretation.]

15 MS. CHO: Objection, vague.

16 A. I don't think I would be able to
17 remember all the details, but the one that
18 comes to mind is that it was relating to a case
19 involving taxation. So the charges were they
20 removed some of the books that were involved
21 and some altercation of the records and things
22 of that sort.

23 Q. Was that a criminal proceeding?

24 [Pause for interpretation.]

25 A. That is correct.

1 Q. Mr. Lee, I think you mentioned
2 something called a disciplinary action earlier.
3 Is that correct?

4 [Pause for interpretation.]

5 A. When it comes to destruction of
6 evidence under the Korean law, that does not
7 relate to any civil cases, but it involves
8 criminal cases or disciplinary actions. What
9 that is related to, that when a case -- when a
10 case is ongoing or -- when a case is ongoing,
11 if you are removing some of the evidences or
12 tampering with evidences, this would be
13 applicable.

14 [Pause for interpretation.]

15 A. So when I said when a case is
16 ongoing, as well as when there is an
17 anticipation of a case to be ongoing.

18 Q. Mr. Lee, what's a disciplinary
19 action?

20 [Pause for interpretation.]

21 A. For example, when there's a public
22 servant who is in violation of the law or if
23 there was some wrongdoing on his part or her
24 part, he will be sanctioned. And the types of
25 sanctions that he or she might be subjected to

1 would be his -- he will not be -- discontinued
2 employment, and he will be laid off, or he will
3 experience reduced salary or also discontinue
4 the employment.

5 Q. So is it fair to say that a
6 disciplinary action only involves a government
7 employee?

8 [Pause for interpretation.]

9 MS. CHO: Objection, outside of
10 scope.

11 A. The way I think of it as well, I
12 believe this is a quite distance from what we
13 are here to discuss, but still if you want an
14 answer, I will try my best to give an answer to
15 the best of my knowledge.

16 MS. YU: Ms. Cho, are you
17 instructing your witness not to answer?

18 MS. CHO: No, I am not.

19 BY MS. YU:

20 Q. And I'm just trying to understand
21 what disciplinary actions are because I'm not
22 familiar with such action, so I'm trying to
23 explore your background. So if you could
24 explain whether disciplinary actions pertained
25 only to government employees, that would be

1 very helpful.

2 [Pause for interpretation.]

3 A. When it comes to destruction of
4 evidence, charges involving destruction of
5 evidence, it's not something that is applicable
6 to public servants only. It can be applicable
7 to employees working in private companies as
8 well.

9 However, when -- when it comes to
10 cases that I have worked on, when the issue of
11 obstruction of -- or destruction, rather, of
12 evidence was an issue, I haven't seen any other
13 cases other than the cases where the public
14 servants were involved.

15 MS. YU: I just want to note for
16 the record I think part of that
17 interpretation was rendered incorrectly.
18 But I'll ask my question to clarify
19 that.

20 BY MS. YU:

21 Q. Mr. Lee, so is it true that
22 disciplinary actions are not limited to
23 government employees?

24 [Pause for interpretation.]

25 MS. CHO: Objection, outside of

1 scope.

2 A. As I mentioned earlier, when it
3 comes to the disciplinary actions, it is
4 also -- it can be applicable to private
5 companies as well. But when it comes to the
6 charges of destruction of evidence, as far as
7 I'm aware, I am aware of the cases where that
8 was an issue to the government employees in
9 connection with the criminal -- the relevant
10 criminal cases.

11 MS. YU: Madam Interpreter?

12 THE INTERPRETER: Mm-hmm.

13 MS. YU: Didn't he say "I am only
14 aware of the cases where that was an
15 issue to the government employees"?

16 THE INTERPRETER: The way I heard
17 it, he might have meant that, but I
18 think he said --

19 [Speaking in Korean.]

20 MS. YU: That's not the part I'm
21 asking about.

22 I'm asking about he said that he's
23 aware only of cases where it applied to
24 government employees.

25 THE INTERPRETER: May I inquire?

1 MS. YU: Sure.

2 [Pause for interpretation.]

3 A. Yes, that is correct, that it
4 would be -- the only ones that I'm aware of
5 would be relevant to the government employees.
6 But I'm not sure about this exactly, but as far
7 as I know, the disciplinary actions in
8 connection with destruction of evidence might
9 not be applicable to employees working in
10 private companies. That's as far as I know.
11 But I'm not 100 percent sure about this. I'm
12 not really certain about that.

13 Q. Mr. Lee, you're currently one of
14 the representative attorneys of Samwoo law
15 firm; correct?

16 [Pause for interpretation.]

17 A. That's correct.

18 Q. And is that how you spell your law
19 firm?

20 [Pause for interpretation.]

21 A. S-A-M-W-O-O. That's correct.

22 Q. When was Samwoo founded?

23 [Pause for interpretation.]

24 A. It was in February of 2012.

25 Q. Are you one of the founding

1 [Pause for interpretation.]

2 A. I gave counsel my business card,
3 and website address should be listed there, I
4 believe.

5 Q. Okay.

6 And we can confirm that during the
7 break, and then, you know, we -- I'll re-ask
8 that question later.

9 Does your firm have any practice
10 areas that it specializes in?

11 [Pause for interpretation.]

12 A. We do not have any particular
13 specialized practice areas, but we do deal with
14 many different cases, general cases, civil
15 cases, criminal cases, administrative cases,
16 and also family cases as well.

17 Q. Have you ever been designated as
18 an expert before?

19 [Pause for interpretation.]

20 A. No.

21 MS. CHO: Counsel, we've been
22 going for almost an hour now. Would you
23 like to take a break?

24 MS. YU: Sure.

25 Do you want a break?

1 THE WITNESS: Yes.

2 THE VIDEOGRAPHER: We're going off
3 the record at 10:05 a.m.

4 [Recess at 10:05 a.m.]

5 [Resuming at 10:26 a.m.]

6 THE VIDEOGRAPHER: We're back on
7 the record at 10:26 a.m., and this marks
8 the beginning of media number 2 in the
9 deposition of Sang-Hun Lee.

10 EXAMINATION CONTINUING

11 BY MS. YU:

12 Q. Okay. Mr. Lee, have you ever
13 provided expert consultant services in
14 connection with litigation before?

15 [Pause for interpretation.]

16 A. I have not.

17 Q. Have you ever submitted a
18 declaration in any case before?

19 [Pause for interpretation.]

20 A. Have I ever submitted my
21 declaration?

22 Q. Yes.

23 [Pause for interpretation.]

24 A. I haven't.

25 Q. Have you ever testified as a

1 witness in any lawsuit?

2 [Pause for interpretation.]

3 A. I haven't.

4 Q. Have you ever been a party to a
5 lawsuit?

6 [Pause for interpretation.]

7 A. I have.

8 Q. How many times?

9 [Pause for interpretation.]

10 A. On two or three different
11 occasions where the clients did not keep their
12 promises as to the compensation when they were
13 able to win the case for them -- when we were
14 able to win the case for them.

15 Q. So the two or three times all
16 involved compensation issues; is that correct?

17 [Pause for interpretation.]

18 A. That is correct.

19 Q. Mr. Lee, which law firm retained
20 you to serve as an expert in this case?

21 [Pause for interpretation.]

22 THE INTERPRETER: Interpreter
23 needs to clarify what the English name
24 for that law firm is.

25 [Pause for interpretation.]

1 after that he participated in the judicial
2 education, research and training, and completed
3 the course and was admitted to the bar.

4 Q. Do you know if Mr. Cha is admitted
5 to practice law anywhere other than Korea?

6 [Pause for interpretation.]

7 A. Not to my understanding.

8 Q. And do you know if Mr. Cha speaks
9 English?

10 [Pause for interpretation.]

11 A. To my understanding, I don't
12 believe he's quite competent in speaking
13 English.

14 Q. Do you know if he had any prior
15 employment experience before working for your
16 law firm?

17 And I would like to limit that to
18 experience as a lawyer.

19 [Pause for interpretation.]

20 A. Not to my understanding.

21 Q. Do you know if he ever presented
22 as a judge before joining your law firm?

23 [Pause for interpretation.]

24 A. No. He did not because he joined
25 my firm after -- immediately after completing

1 important opinions are reflected here. But
2 when we talk about documents, it's not like you
3 would be able to include all of the details in
4 a document. So what I'm saying is that there
5 can be some additional things that I might say,
6 I might talk about.

7 [Pause for interpretation.]

8 Q. Are there additional topics that
9 you might offer your expert opinions about in
10 this case that is not covered in your rebuttal
11 report?

12 [Pause for interpretation.]

13 MS. CHO: Objection, asked and
14 answered.

15 A. I'm not talking about any topics
16 here -- I'm not talking about any additional
17 topics here, but I am talking about the bases
18 or the logic as to those topics.

19 BY MS. YU:

20 Q. Okay.

21 Could you describe for me your
22 understanding of the scope of your assignment
23 for this report?

24 [Pause for interpretation.]

25 A. My understanding of it is that I

1 am to discuss the topic as to whether or not
2 there is any document or material preservation
3 obligation under the Korean laws, especially
4 the Fair Trade Act, under the Fair Trade Act.

5 Q. Okay.

6 And you are offering your opinion
7 as a rebuttal to the report of Professor Dae
8 Sik Hong dated July 21, 2017; correct?

9 [Pause for interpretation.]

10 A. That is correct.

11 Q. Which portions of his report are
12 you rebutting?

13 [Pause for interpretation.]

14 MS. CHO: Objection, vague.

15 A. As part of rebuttal, I raised some
16 issues in my opinion, but the important one is
17 that under the Korean law, under the Fair Trade
18 Act, he was saying that there is no obligation
19 as to document preservation unless we are
20 talking about under the circumstances of
21 on-site investigation. I believe that was --
22 that was the important point of my rebuttal.
23 And there were others as well.

24 [Pause for interpretation.]

25 Q. And what are the others that you

1 reference?

2 [Pause for interpretation.]

3 A. For example, Professor Hong said
4 that when it comes to the US subsidiaries, such
5 as Nongshim America or Ottogi America, those
6 entities would not be subject to the Korean
7 Fair Trade law because there is no
8 jurisdiction. So they are not subject to any
9 investigation. And so that law would not be
10 applicable to those entities. And I made a
11 point in terms of rebuttal to that.

12 [Pause for interpretation.]

13 Q. Any other points that you are
14 rebutting?

15 [Pause for interpretation.]

16 MR. BIRKHAUSER: Objection,
17 vague.

18 A. Those were the important points
19 that I made as part of my rebuttal. But other
20 than those, there were other details that I --
21 that were raised as part of my rebuttal.

22 Q. Could you please summarize for me
23 the opinions that you express in your rebuttal
24 report?

25 [Pause for interpretation.]

1 MS. CHO: Objection, vague.

2 A. First of all, relating to the
3 document preservation obligation, that would be
4 pursuant to the Korea Fair Trade Act. As to
5 the current provisions, that would be
6 applicable to Article 67, paragraphs 9 and 10.
7 But if you're talking about the laws before the
8 amendment, we're talking about Article 69-2,
9 paragraph 1, subparagraphs 6 and 7.

10 [Pause for interpretation.]

11 A. And it's kind of confusing because
12 the applicable laws have changed, so -- but to
13 simplify this, let's just talk about the -- the
14 laws that are effective as of present time,
15 which is the Article number 67, paragraphs 9
16 and 10.

17 [Pause for interpretation.]

18 MS. YU: Okay. One clarification
19 question.

20 Did the witness say that the
21 applicable laws have changed or the
22 applicable statutory reference has
23 changed?

24 THE INTERPRETER: Is this question
25 posed to the interpreter?

1 MS. YU: Pose it to him.

2 [Pause for interpretation.]

3 MS. YU: I have no objection to --
4 oh, wait. I'll let you translate that.
5 Sorry about that.

6 A. So to be exact, before the
7 incident at issue occurred, we're talking about
8 the -- the prior laws, which is Article Number
9 69, paragraph 1 and subparagraphs 6 and 7, and
10 that was the reference that was given in my
11 expert report.

12 [Pause for interpretation.]

13 A. However, there is an amendment of
14 the laws, and the proposed amendment, the
15 article number we're talking about, is Article
16 Number 67, paragraphs 9 and 10.

17 [Pause for interpretation.]

18 A. However, when it comes to the
19 details involving the violation that is at
20 issue, it is the same. But in the current --
21 under the laws that are presently applicable at
22 this time, we're talking about the change in
23 terms of the punishment that could be given,
24 which is a combination of incarceration and
25 fine, fines. But before the amendment, we were

1 talking about just fine.

2 [Pause for interpretation.]

3 A. And -- but the difference we're
4 talking about is to that extent only. So for
5 the purposes of our discussion, I don't think
6 it would make an issue, so we can just go ahead
7 and do so by just referring to the applicable
8 articles and paragraphs under the current laws,
9 which is Article Number 67, paragraphs 9 and
10 10. But if you wish to discuss this by
11 referencing the article numbers in the old
12 laws, we can also do that. It's up to you.

13 Q. Yeah, I have no objection to using
14 whichever reference you feel comfortable. But
15 let me just clarify.

16 [Pause for interpretation.]

17 Q. So when you say paragraph 9,
18 you're referring to preamendment, Article 69,
19 section 2, provision 1, paragraph 6; correct?

20 [Pause for interpretation.]

21 A. That's correct.

22 Q. Okay.

23 And when you refer to paragraph 10
24 of the current law, you're referring to the
25 preamendment, Article 69, section 2, provision

1 1, paragraph 7; correct?

2 [Pause for interpretation.]

3 A. That's correct.

4 Q. Okay.

5 A. If I could continue.

6 Q. Thank you.

7 A. So under the article, under
8 article number -- withdrawn.

9 Under Article 67, paragraph 9,
10 if -- there is an instruction to submit
11 documents, and when you fail to submit
12 documents as instructed or when you submit
13 falsified documents, then you're subject to
14 punishment.

15 [Pause for interpretation.]

16 A. Under Article 67, paragraph 10,
17 when you are concealing, destructing --
18 withdrawn.

19 When you are concealing,
20 destroying, denying access of and/or altering
21 or falsifying documents, those acts would be
22 subject to punishment.

23 [Pause for interpretation.]

24 A. And if you were to make a
25 comparison between those two, the acts that

1 paragraph 10 of Article 67, is what he is
2 claiming.

3 [Pause for interpretation.]

4 A. And when it comes to this
5 investigation that is described under paragraph
6 2 of Article 50, basically it may appear that
7 it is talking about onsite investigation.
8 However, you cannot say that it would be
9 applicable to -- applicable to -- applicable
10 necessarily only to the onsite investigation.
11 It would be necessarily applicable to onsite
12 investigations only.

13 [Pause for interpretation.]

14 THE INTERPRETER: Let me clarify.

15 [Pause for interpretation.]

16 A. However, you cannot say that it
17 would be necessarily applicable only to the
18 onsite investigations only.

19 [Pause for interpretation.]

20 A. And when you look at the -- the
21 later portion of paragraph 2 under Article 50,
22 it includes some description as to that you can
23 summon the relevant people or the party so that
24 you can hear their testimony. That is also
25 included in the latter portion of paragraph 2

1 of Article 50. And that particular
2 investigation you cannot necessarily say that
3 it is applicable only to onsite investigations.

4 [Pause for interpretation.]

5 A. And the details in regards to that
6 portion, it would be subject to the
7 presidential decree. And when it comes to this
8 presidential decree, the location of where you
9 can summon the witnesses to -- can submit
10 witnesses to can be the business location of
11 the company, but it can also be any location
12 that is requested when the Fair Trade
13 Commission is requiring the attendance of the
14 party so that they can hear the testimony.

15 [Pause for interpretation.]

16 A. And the biggest issue that can be
17 raised when you try to understand Professor
18 Hong's opinion is that when there is a heavier
19 or greater degree of obstruction of
20 investigation, which is indicated under
21 paragraph 10 of Article 67, when you commit
22 those activities, which are heavier in terms of
23 the obstruction or -- obstruction of
24 investigation, heavier than that of paragraph 9
25 of Article 67, he is saying that those are not

1 subject to any punishment unless they occur at
2 the time of onsite investigation.

3 [Pause for interpretation.]

4 A. If that is the case indeed then
5 the relevant people at a company can evade any
6 investigation that could be conducted by the
7 Fair Trade Commission by concealing or
8 destructing materials in advance or in
9 anticipation of an onsite investigation.

10 [Pause for interpretation.]

11 A. In addition, if you look at
12 Article 67, paragraph 10, the felonies, felony
13 charges, such as altering or falsification of
14 documents, are included under the -- under the
15 criminal law. And when Professor Hong is
16 claiming that those are okay, unless you find
17 that at the time of onsite investigation, that
18 is something that cannot be understood.

19 [Pause for interpretation.]

20 A. The Fair Trade Commission's
21 interpretation in this regard is that this
22 provision is not something that is applicable
23 only at the time of investigation, onsite
24 investigation. That's their interpretation as
25 well.

1 [Pause for interpretation.]

2 A. The actual cases that I cited in
3 my expert report of the resolutions that were
4 rendered by the Fair Trade Commission include
5 the case involving Samsung Electronics back in
6 2005, and although I'm not sure of the exact
7 year, whether it was 2007 or 2008, there was a
8 case involving SK Communications.

9 All of these cases -- both of
10 these cases actually involved destruction,
11 concealment, and/or altering of the documents
12 before the onsite investigation commenced. And
13 those were subject to -- in both cases, the
14 companies were subject to punishment. Those
15 were the cases that were cited.

16 [Pause for interpretation.]

17 A. And there was a resolution that
18 was rendered against CJ, and what was included
19 in the details involving the violations was
20 that they had been requested to submit
21 documents to the Fair Trade Commission after
22 the onsite investigation was conducted, and
23 pursuant to that request, what they did is to
24 delete some the computer files in submission of
25 their documents. That was what was included.

1 intervals, there are several months that are
2 involved, which is quite lengthy a period.

3 [Pause for interpretation.]

4 A. So during that period of time, if
5 they were -- withdrawn.

6 During that period of time, if it
7 were possible for them to engage in any
8 concealment or destruction of any relevant
9 material, then the purpose of the second or the
10 third onsite investigation would not be
11 achieved at all.

12 [Pause for interpretation.]

13 A. Therefore my opinion is that
14 Professor Hong's view in that regard is not
15 right.

16 [Pause for interpretation.]

17 A. Generally speaking, it would be
18 difficult for me to say that a company would be
19 obligated to preserve documents continuously.

20 However --

21 [Pause for interpretation.]

22 A. If there is a reasonable
23 anticipation of an investigation when there is
24 an alleged illegal activities or when there --
25 when there is an investigation that has

1 commenced already, my opinion in that regard is
2 that until the time when you can reasonably be
3 assured that such investigation is completely
4 finalized, there is an obligation to hold on to
5 the relevant material. That is my opinion.

6 [Pause for interpretation.]

7 A. So my opinion in that regard is
8 that at least until the time when you can
9 reasonably be assured that such investigation
10 is completely finalized, there is an obligation
11 to hold on to the relevant material. That is
12 my opinion.

13 [Pause for interpretation.]

14 A. There isn't --

15 [Pause for interpretation.]

16 A. There aren't any laws that would
17 clearly specify the -- this type of obligation
18 as I described. And so far, there hasn't been
19 any case law as rendered by the Supreme Court
20 as to this point as of yet.

21 [Pause for interpretation.]

22 A. But if you were to interpret in a
23 reasonable manner as to the regulations that
24 are related to the Fair Trade Commission or the
25 Fair Trade Act, I believe you would be able to

1 come to a conclusion that there is such an
2 obligation. That is my view.

3 [Pause for interpretation.]

4 A. Would you want me to summarize my
5 opinion as to the overseas corporations as well
6 as to what they -- what their obligations are?

7 Q. How long do you think it would
8 take for you to summarize your opinions in that
9 regard?

10 [Pause for interpretation.]

11 A. But shorter than the summary that
12 I just gave you.

13 Q. Okay.

14 Why don't you summarize it?

15 And then we'll go off the record
16 and take our lunch break.

17 THE VIDEOGRAPHER: This marks the
18 end of media number 2 --

19 MS. YU: No, no. I said after he
20 summarizes.

21 [Pause for interpretation.]

22 A. Professor Hong is claiming that
23 the entities, namely Nongshim America and
24 Ottogi America, and others, since they do not
25 have any jurisdiction as they are foreign

1 entities or foreign subsidiaries when it comes
2 to the Korean -- Korea Fair Trade Commission.

3 [Pause for interpretation.]

4 A. And he's also claiming that they
5 are not subject to any investigation by the
6 Fair Trade Commission because -- Fair Trade
7 Commission. So, therefore, they do not have
8 any relevance when it comes to this particular
9 litigation is what Professor Hong is claiming.

10 [Pause for interpretation.]

11 A. However, the -- the Fair Trade Act
12 was amended in 2004, and if you look at Article
13 2-2, that provision was newly added to address
14 things that would occur overseas. But those
15 things, if they would have -- would implicate
16 the Korean market, then those incidents --
17 incidents would also be subject to the Korea
18 Fair Trade law is what the law sets forth.

19 [Pause for interpretation.]

20 A. And there is a new addition of
21 Article 36-2, which indicates that an execution
22 of the Fair Trade law, that would be subject to
23 the protocol that is established with other
24 foreign government.

25 [Pause for interpretation.]

1 regard can be subject to that law is my
2 decision and determination.

3 [Pause for interpretation.]

4 A. This case law that I am citing has
5 to do with the formation of an international
6 cartel relating to graphite electrode bar --

7 THE INTERPRETER: Is that right?

8 A. -- graphite electrode bar pricing
9 involving overseas corporations.

10 THE INTERPRETER: Interjection by
11 the interpreter.

12 Graphite electronic -- electrode
13 bar is subject to verification later on.
14 It's a sometimes technical term that was
15 used.

16 [Pause for interpretation.]

17 A. And in this present
18 investigation -- withdrawn.

19 In the case that we are talking
20 about, the Fair Trade Commission did conduct an
21 investigation as to price fixing with respect
22 to the ramen manufacturers involved. And when
23 it comes to price fixing, that would be
24 something that would implicate the ramen that
25 would be exported from Korea -- implicates the

1 ramen pricing that would be exported from
2 Korea.

3 [Pause for interpretation.]

4 A. Also, when it comes to Nongshim
5 America and Ottogi America, these are
6 subsidiaries of the companies located in Korea,
7 and there were close interaction in terms of
8 the employees, and there were -- the work --
9 there was relevance in terms of their work as
10 well.

11 [Pause for interpretation.]

12 A. Under these circumstances, the
13 main office can send so that the relevant
14 material can be concealed there.

15 [Pause for interpretation.]

16 A. Therefore, those US subsidiaries
17 can be subject to the Korean Fair Trade Act and
18 can be subject to its investigation. However,
19 the way Professor Hong expressed it was as if
20 there isn't any such possibility even. And
21 what I'm saying in that regard is that it is
22 not right.

23 That was the -- that was my
24 summary.

25 [Pause for interpretation.]

1 A. Accordingly, the Fair Trade Act
2 sets forth in Article 2-2 that this act will be
3 also applied to cases, even if the act taking
4 place overseas influences the Korean market.

5 [Pause for interpretation.]

6 MS. YU: I disagree with the --
7 just noting for the record, I disagree
8 with the placement of the word "even" in
9 there.

10 I believe that the rendering
11 should be, "Accordingly, the Fair Trade
12 Act sets forth in Article 2-2 that even
13 conduct that takes place overseas will
14 be subject to the Fair Trade Act if the
15 act has an impact on the Korean domestic
16 market."

17 MS. CHO: I agree with that
18 rendition.

19 THE INTERPRETER: Yeah, I agree
20 with that too. Sorry.

21 MS. YU: Okay.

22 THE INTERPRETER: I thought it
23 was -- okay.

24 BY MS. YU:

25 Q. So isn't it -- is it fair to say

1 that conduct abroad will be subject to the
2 Korean Fair Trade Act if there is an impact on
3 the Korean domestic market; correct?

4 [Pause for interpretation.]

5 A. That's right.

6 Q. Okay.

7 Can you refer to paragraph 3 and
8 read out loud the underlined sentence.

9 [Pause for interpretation.]

10 THE INTERPRETER: Interjection by
11 the interpreter.

12 I just read the Korean version as
13 well as the English version, and I am in
14 agreement with the English version that
15 is as rendered in the translation. So
16 if I may.

17 A. Where a foreign business enters
18 into an agreement to restrict competition
19 jointly with other businesses in a foreign
20 country, the Fair Trade Act shall apply, to the
21 extent that the agreement influenced the
22 domestic market due to the domestic market's
23 inclusion in the subject of the agreement.

24 [Pause for interpretation.]

25 Q. And, again, the domestic market

1 referenced here refers to the Korean domestic
2 market; correct?

3 [Pause for interpretation.]

4 A. That's correct.

5 Q. So the Korean Fair Trade Act would
6 apply if there is conduct abroad that has an
7 impact on the Korean domestic market; correct?

8 [Pause for interpretation.]

9 A. That is right.

10 Q. Mr. Lee, what conduct by Ottogi
11 America do you believe had an impact on the
12 Korean domestic market?

13 [Pause for interpretation.]

14 MS. CHO: Objection, outside of
15 scope.

16 [Pause for interpretation.]

17 A. As to what actually happened, I do
18 not know, and that was my answer to your
19 question. But I am thinking that you are
20 asking this question to ask me if what is
21 indicated here would be applicable to the issue
22 that we are talking about.

23 [Pause for interpretation.]

24 A. If that is the case, the reason
25 why I wrote what I wrote is because even the

1 companies that are located abroad can be
2 subject to the Korea Fair Trade Act as an
3 example, and this was indicated here as an
4 example in a comprehensive sense.

5 [Pause for interpretation.]

6 A. But it is not something that I
7 intended to mean that what we are talking about
8 here is exactly applicable to this regulation
9 or law that we're talking about.

10 [Pause for interpretation.]

11 Q. Okay.

12 And you are also not aware of any
13 conduct by Nongshim America that you believe
14 had an impact on the Korean domestic market;
15 correct?

16 [Pause for interpretation.]

17 MS. CHO: Objection, outside the
18 scope of his report.

19 [Pause for interpretation.]

20 A. As I just indicated to you
21 earlier, it's not like I wrote this report
22 based on facts, so I don't think I can say
23 that -- withdrawn.

24 [Pause for interpretation.]

25 A. So I'm not saying that I am aware

1 of any such facts.

2 Q. So other than instances where
3 foreign conduct by foreign corporations have an
4 impact on the Korean domestic market, are there
5 any other instances when the Korean Fair Trade
6 Act would apply to foreign conduct or foreign
7 corporations?

8 [Pause for interpretation.]

9 A. As I indicated to you earlier, as
10 to what occurred in actuality, I do not know.

11 [Pause for interpretation.]

12 A. But if we were to discuss what we
13 were talking about as an example, what I'm
14 saying is that under the presumption that
15 such -- such a conduct could occur, under that
16 assumption, since the Korean companies, the
17 Korean ramen companies, and in between the
18 Korean ramen companies and their US
19 subsidiaries, if there are any price fixing
20 conduct that occurred, then there can be in
21 depth -- or there can be relationship,
22 considerable relationship in between the two,
23 because -- therefore, as I said earlier, if
24 setting forth the pricing of the -- for the
25 products, ramen products in Korea, can have an

1 impact on the -- the pricing of ramen that are
2 being exported.

3 [Pause for interpretation.]

4 A. So there can be significant
5 likelihood that there is a correlation in
6 between those two in terms of the pricing of
7 the product, the ramen product.

8 [Pause for interpretation.]

9 A. And also between the employees of
10 the Korean companies and the employees of the
11 US subsidiaries, there can be communication
12 that could occur between those employees.

13 [Pause for interpretation.]

14 A. And in that regard, the managers
15 who are managing the operation of the overseas
16 market at the main office in Korea can be
17 involved in the management of the work that is
18 performed by the US subsidiaries, so there can
19 be some control in that regard.

20 [Pause for interpretation.]

21 A. And because those relevant
22 materials can be communicated in between those
23 two, when you look at the circumstances from
24 the perspective of the Fair Trade Commission,
25 if they deem it's necessary, they -- the

1 subsidiaries, overseas subsidiaries can be
2 subject to Fair Trade Commission's
3 investigation because there is a high relevance
4 in terms of their work.

5 [Pause for interpretation.]

6 A. Therefore, in such circumstances,
7 if there is any conduct that is taking place on
8 the part of the subsidiaries' companies as to
9 the document concealment, destruction and/or
10 altercation or tampering with of any such
11 material, then those conducts can be subject to
12 punishment.

13 [Pause for interpretation.]

14 MR. DOSKER: I make a motion to
15 strike the answer.

16 BY MS. YU:

17 Q. You are not contending that any of
18 these things actually happened; correct?

19 [Pause for interpretation.]

20 MR. BIRKHAUSER: Objection,
21 vague.

22 A. I'm not aware of any facts here,
23 so I am not contending that these things
24 actually happened.

25 Q. A couple of quick followup

1 time of 2004 when the amendments were being
2 made to the law.

3 [Pause for interpretation.]

4 A. The main basis that I have when I
5 made an argument about the applicability of the
6 Korea Fair Trade Act to US subsidiaries or
7 corporations is the relevance of the -- the
8 main office is located in Korea when it comes
9 to setting forth pricing.

10 [Pause for interpretation.]

11 Q. What do you mean by relevance to
12 the main office located in Korea when it comes
13 to setting forth pricing?

14 [Pause for interpretation.]

15 A. Actually, I provided a pretty
16 detailed explanation about that earlier. So
17 should I go back and explain that again?

18 Q. My understanding was that your
19 opinion was that Korean Fair Trade Act can have
20 an impact on foreign conduct when there is an
21 impact on the Korean domestic market; correct?

22 [Pause for interpretation.]

23 A. That is something that is set
24 forth in Article 2-2. But when I make this
25 argument, it is not based upon that

1 particular -- that article.

2 Q. Then what are you basing it on?

3 [Pause for interpretation.]

4 A. If the Fair Trade Commission
5 believes that the price fixing as to the ramen
6 products is something that affected the
7 domestic market in Korea only, then the
8 Korea -- the ramen companies that are located
9 in Korea would be subject to its investigation,
10 the ramen companies that are located in Korea
11 only.

12 [Pause for interpretation.]

13 A. However, on the contrary, if the
14 Korea Fair Trade Commission considers or
15 believes that such price fixing would have an
16 impact on the overseas subsidiaries as well, if
17 they believe that to be the case --

18 [Pause for interpretation.]

19 A. -- then the commission would deem
20 it's necessary that the overseas corporations
21 or the subsidiaries would be subject to its
22 investigation.

23 [Pause for interpretation.]

24 A. Because when it comes to the
25 pricing of ramen products in overseas market,

1 subsidiaries.

2 [Pause for interpretation.]

3 A. So in that regard, overseas
4 subsidiaries, subsidiaries can be subject to
5 the investigation is what I'm saying. But what
6 I'm not saying is that it would be based upon
7 the impact in the foreign market.

8 [Pause for interpretation.]

9 Q. Mr. Lee, are you aware that the
10 KFTC issued a public statement stating that US
11 ramen products were not the subject of this
12 investigation?

13 [Pause for interpretation.]

14 MS. CHO: Objection, states -- to
15 the extent it mischaracterizes the
16 KFTC's statement.

17 [Pause for interpretation.]

18 A. I am not aware of any facts here,
19 and nor am I aware of any announcement like
20 that.

21 Q. Okay.

22 [Pause.]

23 Q. Okay. Could you please turn to
24 section A in your rebuttal report, and
25 specifically to paragraph 1?

1 [Deposition Exhibit 2 marked for
2 identification.]

3 [Discussion while marking
4 exhibit.]

5 BY MS. YU:

6 Q. Please let me know once you've had
7 a chance to review that document.

8 [Pause for interpretation.]

9 A. Yes.

10 Q. Okay.

11 Are you familiar with this
12 document?

13 [Pause for interpretation.]

14 A. Yes.

15 Q. Can you describe what it is?

16 [Pause for interpretation.]

17 A. I read it on a few different
18 occasions. Yeah.

19 [Pause for interpretation.]

20 A. Simply put, this is setting forth
21 the opinions by Professor Hong. And, generally
22 speaking, what he is claiming is that under the
23 Korean law, generally speaking, there isn't any
24 obligation to preserve documents or material,
25 especially under the Korea's Fair Trade Act,

1 Article 67-10. Article 67, paragraph 10, those
2 conducts that are described under that
3 provision, when those conducts occurred at the
4 time of an onsite investigation, to that extent
5 only, those conducts would be subject to
6 punishment. That would be the summary, I would
7 say.

8 Q. So this is the report to which
9 your rebuttal report is submitted as a
10 rebuttal; correct?

11 [Pause for interpretation.]

12 A. That's right.

13 Q. And earlier you testified that you
14 did not review Professor Hong's other expert
15 report submitted in this case in preparation
16 for your deposition; correct?

17 [Pause for interpretation.]

18 A. That's correct.

19 Q. Did you ever review Professor
20 Hong's other expert report submitted in this
21 case?

22 MS. CHO: Objection to the extent
23 it asks for communications with counsel.

24 [Pause for interpretation.]

25 BY MS. YU:

1 And specifically I am referring to the Korean
2 version of your rebuttal report.

3 [Pause for interpretation.]

4 A. Yes.

5 Q. Could you please read the first
6 sentence of paragraph 5?

7 [Pause for interpretation.]

8 [Reading in Korean.]

9 A. Furthermore, there is a case in
10 which the KFTC imposed a fine on the respondent
11 company for not submitting the document as
12 requested for production of documents in which
13 the KFTC did not conduct any onsite
14 investigation and the respondent company did
15 not comply with the three official requests for
16 production. Resolution No. 2012-001
17 2011SeoChong3015 ShinHan Life Insurance.

18 [Pause for interpretation.]

19 Q. And the precedent you're
20 describing in that sentence relates to a
21 company's failure to submit specific documents
22 requested by the KFTC; correct?

23 [Pause for interpretation.]

24 A. That's correct.

25 Q. And the statute cited by this

1 precedent was Article 67, Paragraph 9; correct?

2 [Pause for interpretation.]

3 A. That's correct.

4 Q. And that case specifically
5 mentions the KFTC's authority to request
6 submission of specific documents that arise
7 from Article 50, section 1, provision 3;
8 correct?

9 [Pause for interpretation.]

10 A. That's correct.

11 Q. And there is no mention of
12 investigation under Article 50, section 2 in
13 that decision; correct?

14 [Pause for interpretation.]

15 A. Although I do not have an exact
16 recollection, I would believe that to be the
17 case.

18 Q. And there is no mention of Article
19 67, paragraph 10 in that decision; correct?

20 [Pause for interpretation.]

21 A. That is, is my understanding.

22 Q. So this case involved a violation
23 of duty to submit specific documents requested
24 by the KFTC that Professor Hong describes in
25 paragraph 11 of his report; correct?

1 Q. And I'm not asking with specific
2 facts in mind -- wait, strike that.

3 [Pause for interpretation.]

4 Q. And I'm -- my question is a
5 hypothetical.

6 With that in mind, in your
7 opinion, would it be fair for a company to
8 believe that the KFTC investigation has been
9 completed when the KFTC informs the company
10 that it's ending its investigation?

11 MS. CHO: Objection, vague, asked
12 and answered.

13 [Pause for interpretation.]

14 A. As I just indicated to you
15 earlier, it may be at that point in time. Then
16 again, it may not be under -- depending on the
17 circumstances.

18 Q. Okay.

19 MR. BIRKHAUSER: I want to assert
20 an additional objection that the
21 hypothetical was incomplete.

22 BY MS. YU:

23 Q. Mr. Lee, is it also your opinion
24 that once there is an onsite investigation, the
25 investigated companies are required to suspend

1 all normal document retention practices and
2 policies?

3 MS. CHO: Objection, vague.

4 [Pause for interpretation.]

5 A. Under -- withdrawn.

6 [Pause for interpretation.]

7 A. Generally speaking, unless there
8 is any special circumstances, it would be fine
9 for a company to maintain its normal policies
10 or practices when it comes to destruction of
11 documents. Generally speaking, again, I don't
12 think that would create any issue.

13 [Pause for interpretation.]

14 A. However, if there is investigation
15 that was commenced by the KFTC or if there is
16 any anticipation that investigation by KFTC is
17 to -- is to begin as to any relevant documents,
18 if a company tries to destroy documents on
19 account of or based on the reasons that it is
20 the company practice or the policy, I don't
21 think that can be justified.

22 Q. So is it your opinion then that
23 once a company is investigated or is
24 anticipating that it may be investigated, they
25 cannot discard any documents whatsoever?

1 MS. CHO: Objection, vague and
2 mischaracterizes prior testimony.

3 [Pause for interpretation.]

4 A. I believe I addressed that -- this
5 very pending question or earlier when I gave
6 that answer because I mentioned any relevant
7 documents that are subject to the
8 investigation. I don't think I said anything,
9 any document whatsoever.

10 Q. And how is a company supposed to
11 ascertain what document is relevant?

12 MS. CHO: Objection, vague --

13 [Pause for interpretation.]

14 MS. CHO: I'm not done yet.

15 Sorry.

16 MR. BIRKHAUSER: Incomplete
17 hypothetical.

18 MS. CHO: Yeah.

19 MS. YU: Tag team.

20 [Pause for interpretation.]

21 A. As to your question, there hasn't
22 been anything that I myself experienced on hand
23 in that regard, so if I could just tell you my
24 thoughts.

25 [Pause for interpretation.]

1 A. My thinking is that when the Fair
2 Trade Commission is conducting its
3 investigation, I don't believe that they will
4 be secretive as to their investigation so that
5 nobody would know as to -- know as to what.
6 So, of course, this is my presumption. This is
7 some assumption that I am -- maybe go here.
8 But from the company's perspective, I would
9 think that we're talking about some of the
10 issues that they would be aware of. So -- but,
11 then again, not knowing the specific facts, I'm
12 not saying that I would know as to any specific
13 facts in that regard, but --

14 THE INTERPRETER: Just one
15 quick -- may I inquire as to the last?
16 I couldn't read.

17 MS. YU: Sure.

18 [Pause for interpretation.]

19 A. I'm not saying that I would know
20 as to any specific facts in that regard, and
21 nor am I aware of any specific facts in
22 connection with this case either.

23 Q. In going back to your prior
24 testimony that there is a duty to suspend
25 normal document retention practices and

1 policies, once a KFTC investigation has
2 commenced or is anticipated, what is the
3 statutory basis for that opinion?

4 MS. CHO: Objection to the extent
5 it mischaracterizes prior testimony.

6 [Pause for interpretation.]

7 A. I believe I mentioned this when I
8 gave you the summary in my answer in the
9 morning.

10 So as to any obligation in a
11 general sense when it comes to document
12 retention, there isn't any statute that would
13 directly specify that or -- nor is there any
14 case law that was rendered by the Supreme
15 Court, to my understanding.

16 [Pause for interpretation.]

17 A. So when -- what I was describing,
18 if I were to tell you in terms of any statute
19 in terms of the number of articles, I can cite
20 to you Article 67-10 in the sense that the
21 conducts that are described under that article,
22 which has to do with destruction of documents,
23 concealing of documents, altering or tampering
24 with any documents, those conducts are
25 described there.

1 interpret such provision as applying only at
2 the time of the onsite investigation.

3 Said provision reads:

4 In the case of the investigations
5 in accordance with paragraph 2 of Article 50.
6 As shown below, the investigations in
7 accordance with paragraph 2 of Article 50 do
8 not refer to onsite investigations only.

9 Q. Okay.

10 And this provision that is
11 referenced in that, in those two sentences,
12 refer to Article 67, paragraph 10; correct?

13 [Pause for interpretation.]

14 A. That's correct.

15 Q. Okay.

16 Could you please turn to paragraph
17 7 under section A of your rebuttal report,
18 please? And I'm still talking about the Korean
19 version.

20 [Pause for interpretation.]

21 Q. Could you please read out loud the
22 sentence I believe is the third sentence of
23 paragraph 7? And it starts with Article 50
24 provision -- or Article 50, section 2.

25 [Pause for interpretation.]

1 [Reading in Korean.]

2 A. Paragraph 2 of Article 50 presents
3 both cases of investigation by physically
4 entering the workplace of the business as well
5 as hearing testimonies of the concerned
6 parties, interested parties or witnesses in a
7 designated location.

8 Q. And the phrase "investigation by
9 physically entering the workplace of the
10 businesses" is in reference to onsite
11 investigation; correct?

12 [Pause for interpretation.]

13 A. Yes, that's correct.

14 Q. And the phrase that says "hearing
15 testimonies of the concerned parties,
16 interested parties or witnesses in a designated
17 location" refers to testimony; correct?

18 [Pause for interpretation.]

19 A. I would believe so.

20 [Pause for interpretation.]

21 A. But I don't think it would
22 necessarily mean any testimony in a courtroom
23 setting, but I believe this is referring to
24 testimony in the process of an investigation.

25 Q. But it pertains to testimonial

1 evidence; correct?

2 [Pause for interpretation.]

3 A. That is referring to testimony, it
4 is correct. That it is referring to testimony,
5 it is correct.

6 Q. Isn't it true that Article 50,
7 section 2 only specifies these two
8 investigative tactics?

9 [Pause for interpretation.]

10 A. If you're talking about Article
11 50, section 2, it is correct that it specifies
12 these two methods only.

13 THE INTERPRETER: If I could
14 rerender, please.

15 A. If you're talking about Article
16 50, section 2, it is correct that it specifies
17 these two only.

18 Q. Okay.

19 So is it fair to say that the only
20 investigative method involving documentary
21 evidence under Article 50, section 2 relates to
22 onsite investigation?

23 MR. BIRKHAUSER: Objection,
24 vague.

25 [Pause for interpretation.]

1 A. I don't believe so.

2 Q. And then what is your belief?

3 [Pause for interpretation.]

4 A. Because if you look at the -- the
5 portion that comes later under Article 50,
6 section 2, it says -- it talks about instances
7 where you would hear testimonies by witnesses,
8 interested parties or the parties in a
9 designated location. And actually this would
10 be specified by presidential decree.

11 [Pause for interpretation.]

12 A. So if you were to look at the
13 details involved in the presidential decree as
14 to the location where you could hear the
15 testimonies given, the locations can be offices
16 or a place that is designated by the Fair Trade
17 Commission by summoning these witnesses.

18 So it doesn't necessarily have to
19 be an onsite investigation, so I don't think it
20 is referring to an onsite investigation only
21 here.

22 Q. But that investigative tactic
23 relates to testimony; correct?

24 [Pause for interpretation.]

25 A. That is correct.

1 filed a suit with the courts.

2 Q. Okay.

3 Finished?

4 [Discussion off the record.]

5 THE VIDEOGRAPHER: Going off the
6 record at 4:11 p.m. This marks the end
7 of media number 4.

8 [Recess at 4:11 p.m.]

9 [Resuming at 4:22 p.m.]

10 THE VIDEOGRAPHER: We're back on
11 the record at 4:23 p.m., and this marks
12 the beginning of media number 5 in the
13 deposition of Sang-Hun Lee.

14 MS. YU: Ready? Okay.

15 EXAMINATION CONTINUING

16 BY MS. YU:

17 Q. Mr. Lee, does Korean law have
18 civil procedures that apply to civil
19 litigation?

20 MS. CHO: Objection, outside of
21 scope.

22 [Pause for interpretation.]

23 A. There are various proceedings,
24 civil litigation proceedings, criminal
25 litigation proceedings, as well as

1 administrative litigation proceedings.

2 Q. Okay.

3 So there is different laws that
4 apply to civil litigation versus criminal
5 litigation versus administrative proceedings;
6 correct?

7 [Pause for interpretation.]

8 A. Basically, yes is the answer. But
9 when it comes to administrative proceedings,
10 the cases are -- those cases refer to civil
11 litigations in many respects.

12 Q. Okay.

13 Can you turn to paragraph 9 under
14 Section A of your rebuttal report? And I am
15 still referencing the Korean version.

16 [Pause for interpretation.]

17 Q. Could you please read the
18 underlined portion?

19 [Pause for interpretation.]

20 [Reading in Korean.]

21 A. It says: Destroying any relevant
22 evidence in advance, even prior to an
23 investigation or a disciplinary proceeding,
24 shall be subject to punishment for the
25 destruction of evidence if there is a

1 possibility that the case might advance to a
2 criminal or disciplinary proceeding in the
3 future.

4 Q. So the underlined portion
5 contained in paragraph 9 of your rebuttal
6 report relates to criminal or disciplinary
7 actions; correct?

8 [Pause for interpretation.]

9 A. That's correct.

10 Q. So can you please read the
11 paragraph that begins with, "Therefore, under
12 the Korean Fair Trade Act..."?

13 It's the second sentence after --

14 [Reading in Korean.]

15 [Pause for interpretation.]

16 A. Therefore, the same standard in
17 the precedent that's described above shall be
18 applied with respect to punishment for
19 destruction of documents under the Fair Trade
20 Act.

21 Q. Are you saying that the standard
22 in the precedent, in fact, applies to the Fair
23 Trade Act?

24 [Pause for interpretation.]

25 MR. BIRKHAUSER: Objection,

1 vague.

2 [Pause for interpretation.]

3 A. The reason why I described these
4 -- or this precedent here is because when there
5 is a conduct -- a conduct involving destruction
6 of evidence in connection with a criminal case
7 or disciplinary action case, I -- I believe
8 that that was quite similar to those cases
9 where destruction of evidence such as
10 destruction of documents and whatnot that could
11 occur in connection with the Fair Trade Act.

12 [Pause for interpretation.]

13 A. However, from the perspective of
14 the Supreme Court, even if you are talking
15 about a time point where -- time point before
16 any disciplinary action or investigation
17 occurs, the Supreme Court considers that if
18 there is any destruction of relevant material
19 or evidence in advance, that would constitute
20 destruction of evidence from the perspective of
21 the Supreme Court.

22 [Pause for interpretation.]

23 A. And I believe that, that logic
24 should be applicable to the investigations as
25 carried out by the KFTC or even before such an

1 investigation is to occur if you are talking
2 about a time point where you can anticipate
3 such an investigation to occur, of course, let
4 alone at the time point where an actual
5 investigation has occurred.

6 [Pause for interpretation.]

7 A. So in other words, if you are
8 talking about a time point where you can
9 reasonably anticipate such an investigation to
10 occur, you know, from the point on, there
11 shouldn't be any document destruction, any
12 relevant document destruction or concealment of
13 such document forgering or tampering with any
14 such documents. And that is the interpretation
15 that I can come up with. And that was what I
16 was trying to convey here by explaining that
17 logic.

18 [Pause for interpretation.]

19 A. However, these precedents that are
20 described here in connection with the criminal
21 cases or disciplinary actions, whether these
22 precedents can be readily applicable to the
23 cases that occur -- the cases that might be
24 relevant to the Fair Trade Act, I cannot be
25 sure of that.

1 Q. Okay.

2 So in that opinion, are you saying
3 that the standard in regard to the destruction
4 of evidence in the criminal case is certainly
5 applicable to document destruction under the
6 Fair Trade Act, or are you saying that it may
7 be applied?

8 [Pause for interpretation.]

9 A. I'm not saying that it is
10 certainly applied or not, but what I'm saying
11 is that the basic logic is the same. So the
12 logic that is applied to the document
13 destruction under the criminal law can be a
14 valid basis in coming up with the
15 interpretation of the Fair Trade Act that we
16 are discussing here. That was the perspective
17 from which I was opining my view.

18 Q. Okay.

19 And you've stated that a duty to
20 preserve documents may commence when an onsite
21 investigation is imminent. Could you describe
22 what you mean by "imminent"?

23 [Pause for interpretation.]

24 A. First of all, when I was
25 describing this, I was not limiting this --

1 limiting it to onsite investigations only. So
2 be that onsite investigation or general
3 investigation. What I'm talking about here is
4 that at a time point where it is -- where you
5 can reasonably anticipate investigation to
6 commence, the obligation to preserve documents
7 may arise from that point on.

8 [Pause for interpretation.]

9 A. And as to the time point where you
10 can expect -- reasonably expect an
11 investigation to occur, when would that be?
12 That would depend on the specificity of an
13 issue that you are dealing with. So I don't
14 think I can give you any one-size-fits-all type
15 of an answer.

16 Q. So what are some of the factors
17 that you would consider in determining whether
18 or not an investigation is imminent, as you use
19 that word?

20 [Pause for interpretation.]

21 MS. CHO: Objection to the extent
22 it calls for speculation.

23 [Pause for interpretation.]

24 A. As to that, for me to come up with
25 any such specific examples, I don't know if

1 that's proper or not because I didn't -- I
2 don't have on-hand experience in that regard.
3 So it would be difficult for me.

4 [Pause for interpretation.]

5 A. But as I explained to you earlier,
6 you would have to consider many different --
7 you would have to consider various
8 circumstances comprehensively and at a certain
9 point in time where you can reasonably
10 anticipate that an investigation is to occur.

11 [Pause for interpretation.]

12 A. Of course, I don't know when that
13 specific point in time might be depending on
14 the circumstances. But when you can expect an
15 investigation to commence more or less would be
16 the time point that I'm thinking of. But, you
17 know, for me to describe to -- as to the
18 specific factors in that regard, it would be
19 rather difficult.

20 [Pause for interpretation.]

21 A. If I were to venture -- to give
22 you one example --

23 [Pause for interpretation.]

24 A. -- let's say there's a rumor that
25 there was some pricing cartel that has been

1 [Pause for interpretation.]

2 A. I think that's how we should
3 consider things.

4 Q. Are you --

5 [Pause for interpretation.]

6 A. So if I were to answer your
7 question that was pending, so on the basis of
8 someone claiming that he or she didn't know
9 anything about investigation that was under
10 way, I am not aware of any decision being made
11 under that assumption of the -- of a person not
12 being knowledgeable or being aware of any
13 investigation. Any such investigation.

14 Q. Mr. Lee, do you understand that
15 the KFTC investigation in Korea started with an
16 onsite investigation on June 3, 2008?

17 [Pause for interpretation.]

18 A. When it comes to the ramen
19 manufacturers we were discussing, yes, that's
20 my understanding.

21 Q. And thank you for clarifying that.
22 Do you have any reason to believe
23 that any of the investigated companies knew
24 about the investigation before that time?

25 MS. CHO: Objection, outside of

1 scope.

2 [Pause for interpretation.]

3 A. I don't know about anything
4 factual. I think I've related to you on
5 several different occasions so far, but the
6 same answer here as well.

7 [Discussion off the record.]

8 Q. Could you please turn to paragraph
9 10 under section A of your rebuttal report.

10 And in that paragraph, you discuss
11 litigation hold duties under US law; correct?

12 [Pause for interpretation.]

13 A. That's correct.

14 Q. And you reference a specific case
15 that is titled Stevenson v. Union Pacific
16 Railroad Company; correct?

17 [Pause for interpretation.]

18 A. That's correct.

19 Q. How did you find this precedent?

20 [Pause for interpretation.]

21 A. As I remember, I believe I became
22 aware of this case through the assistance of
23 the attorney that I mentioned earlier that I
24 received assistance from.

25 Q. And that's Mr. Cha; correct?

1 [Pause for interpretation.]

2 A. That is correct, but I don't know
3 whether Mr. Cha was able to research on this
4 himself or whether he received some assistance
5 from his acquaintances or not.

6 Q. Mr. --

7 A. I don't know to that extent.

8 Q. Okay.

9 Mr. Lee, did you review an order
10 from Judge Orrick in this case denying
11 plaintiffs' motion to sanction Nongshim
12 defendants and Ottogi defendants?

13 [Pause for interpretation.]

14 A. I did. I saw it.

15 Q. Oh, and going back to the
16 precedent that we just talked about, Stevenson
17 v. Union Pacific Railroad, did you review that
18 case in English or did you review that case in
19 Korean?

20 [Pause for interpretation.]

21 A. I saw it in English.

22 Q. Did you review any other US case
23 law in forming your opinions?

24 [Pause for interpretation.]

25 THE INTERPRETER: Withdrawn.

1 not either Nongshim or Ottogi was in violation
2 with the Korea's Fair Trade Act, which is the
3 issue that we were discussing here.

4 So I didn't feel any particular
5 need to review any other decisions.

6 Q. But you reviewed the Stevenson
7 case, even though that did not relate to duty
8 under Korean law; correct?

9 [Pause for interpretation.]

10 A. I did.

11 [Pause for interpretation.]

12 A. The reason for that was --

13 [Pause for interpretation.]

14 A. Although the litigation hold is
15 not something that is directly related to the
16 issues that we're discussing here, but the --
17 the logic behind it, behind this decision that
18 is rendered, it is something -- that is
19 something that I believed would be similar to
20 the logic that I thought would be supporting my
21 argument. So that's the reason why.

22 [Pause for interpretation.]

23 A. My understanding of this case law
24 was -- is --

25 [Pause for interpretation.]

1 "The Fair Trade Commission's
2 interpretation in this regard is that this
3 provision is not something that is applicable
4 only at the time of investigation, onsite
5 investigation. That's their interpretation as
6 well."

7 MR. DOSKER: I'll pause for the
8 translation.

9 [Pause for interpretation.]

10 BY MR. DOSKER:

11 Q. So my question is, is that
12 actually the KFTC's interpretation, or is that
13 your opinion about what the KFTC's
14 interpretation would be?

15 MS. CHO: Objection, vague.

16 MR. BIRKHAUSER: Compound.

17 [Pause for interpretation.]

18 A. That was KFTC's actual
19 interpretation.

20 Q. And what is your basis for saying
21 that that is the KFTC's actual interpretation?

22 [Pause for interpretation.]

23 A. Those cases that I mentioned
24 earlier, the case involving Samsung Electronics
25 in 2005 as well as those cases involving SK

1 Communications and the company CJ, the
2 decisions made by the FTC as to their
3 interpretations of the decisions are clearly
4 indicated in those decisions.

5 [Pause for interpretation.]

6 A. What that sets forth as far as I
7 remember was that even if you're talking about
8 a time point where an investigation is yet to
9 begin, if there is any conduct that has been
10 carried out for the purposes of destroying or
11 concealing documents with -- with the purpose
12 to interrupt an investigation which is yet to
13 begin, those conducts would be subject to
14 punishment. And that is something that is
15 clearly indicated in the decisions involving
16 all of those three cases.

17 MS. CHO: Madam Interpreter, you
18 translated "pong hey" as "interrupt."
19 Under the context of this translation,
20 would "obstruct" be a better, more
21 accurate translation?

22 THE INTERPRETER: Oh, yes.

23 Obstruct, yes, that's right. Thank you.

24 BY MR. DOSKER:

25 Q. Mr. Lee, I'm now going to ask you

1 THE WITNESS: Right.

2 A. That's right.

3 Q. Please assume that in 2012 the
4 KFTC issued its order, stating the conclusions
5 of its investigation of the ramen companies.

6 [Pause for interpretation.]

7 Q. Now, in your role as an expert
8 witness in this US litigation, you do not offer
9 any opinion about whether the ramen companies
10 were required by Korean law to preserve
11 documents after the KFTC issued its 2012 order,
12 do you?

13 MS. CHO: Objection -- I'm sorry.

14 [Pause for interpretation.]

15 MS. CHO: Objection, vague.

16 MR. BIRKHAUSER: Incomplete
17 hypothetical.

18 [Pause for interpretation.]

19 A. As I indicated to you earlier, the
20 obligation to preserve documents continues at
21 least until a reasonable person, assumed that
22 there is a reasonable person, that he or she
23 believes that the investigation is completely
24 finalized.

25 [Pause for interpretation.]

1 A. And as to your question, when such
2 a decision was rendered by the KFTC, if the
3 time point where they reached that -- where
4 they rendered the decision coincides with the
5 time point that I was describing earlier, I
6 don't think I can say anything definitive in
7 that regard. I believe it is an issue that
8 needs to be determined considering various
9 factors.

10 [Pause for interpretation.]

11 A. I think there was a phrase that
12 was missing in the -- the last sentence of the
13 interpretation that was just rendered.

14 So I believe it is an issue that
15 needs to be determined considering various
16 factors comprehensively.

17 [Pause for interpretation.]

18 A. And as to my role in terms of the
19 US litigation, although I am serving the role
20 of an expert witness in this litigation, but
21 when it comes to the issue or issues that I am
22 dealing with, I think it is something that is
23 limited to whether there was a -- there was a
24 violation of the Korea Fair Trade Act.

25 If the ramen manufacturers did

1 destroy or -- and/or conceal documents at the
2 time that is alleged by the plaintiff that they
3 did.

4 Q. So in your role as an expert
5 witness for the plaintiffs in this US
6 litigation, does the scope of your opinion
7 about Korean law also include when in this case
8 the duty under Korean law ended?

9 MS. CHO: Objection, vague.

10 [Pause for interpretation.]

11 A. Under the Korean law, up until
12 when the obligation to preserve documents
13 continues, I don't think I can give any
14 definitive answer to that issue.

15 [Pause for interpretation.]

16 A. In connection with the case, to my
17 understanding, the plaintiffs are alleging that
18 the ramen manufacturers were engaged in
19 destruction and/or concealment of materials
20 during the time of the Fair Trade Commission's
21 investigation was still going on after the
22 onsite investigation was conducted on June the
23 3rd, 2008. That is my understanding.

24 [Pause for interpretation.]

25 A. And in that, in that particular

1 case, if it is indeed the case that they did
2 occur, would that constitute the violation or a
3 violation of the Korea's Fair Trade Act? My
4 job is to opine on that issue. However, when
5 it comes to the obligation to preserve
6 documents when that would end, it is something
7 that is outside of the scope of my opinion.

8 [Pause for interpretation.]

9 MR. DOSKER: Let's take a short
10 break.

11 THE VIDEOGRAPHER: Going off the
12 record at 6:21 p.m.

13 [Recess at 6:21 p.m.]

14 [Resuming at 6:32 p.m.]

15 THE VIDEOGRAPHER: We're back on
16 the record at 6:32 p.m.

17 MR. DOSKER: I have no further
18 questions for the moment. Thank you,
19 Mr. Lee.

20 [Pause for interpretation.]

21 THE WITNESS: Thank you.

22 THE INTERPRETER: Thank you.

23 MS. CHO: All right.

24 EXAMINATION

25 BY MS. CHO:

1 obligation of the preservation would not be
2 ending.

3 [Pause for interpretation.]

4 MS. CHO: I have no further
5 questions.

6 MR. DOSKER: So a couple of
7 further questions then in view of your
8 redirect.

9 THE INTERPRETER: Let me rerender
10 the last sentence.

11 There's a high likelihood of the
12 preservation obligation would not be
13 ending. A likelihood that the
14 preservation obligation would not be
15 ending.

16 FURTHER EXAMINATION

17 BY MR. DOSKER:

18 Q. Your written expert report does
19 not mention anything about what would happen if
20 there were an appeal, does it?

21 [Pause for interpretation.]

22 A. That is correct.

23 [Pause for interpretation.]

24 A. As I said earlier, as to when that
25 preservation obligation would be ending, that

1 is something that falls outside the scope of my
2 report. However, I answered the questions
3 because the questions were posed by both of the
4 attorneys.

5 Q. Regarding the answer that you gave
6 to the question by plaintiffs' counsel on
7 redirect, is there any Korean statute that says
8 what you just testified?

9 [Pause for interpretation.]

10 A. I don't believe that there would
11 be any.

12 Q. Likewise, regarding the answer
13 that you gave to the question by plaintiffs'
14 counsel on redirect, is there any Korean court
15 decision or precedent that says what you have
16 just testified?

17 [Pause for interpretation.]

18 A. As to the punishment that could be
19 rendered in the case of obstruction of
20 investigation, it used to be a fine that was
21 imposed before, and now it's a criminal penalty
22 that it would be subject to. However, my
23 understanding is that there is rarely a case
24 that has been filed with the court relating to
25 that. So apparently I -- my answer is that I

C E R T I F I C A T E

I, PAUL J. FREDERICKSON, CA
Certified Shorthand Reporter No. 13164 and
WA Certified Court Reporter No. 2419, do
hereby certify:

That prior to being examined,
the witness named in the foregoing
deposition was by me duly sworn or affirmed
to testify to the truth, the whole truth and
nothing but the truth;

That said deposition was taken
down by me in shorthand at the time and
place therein named, and thereafter reduced
to print by means of computer-aided
transcription; and the same is a true,
correct and complete transcript of said
proceedings.

I further certify that I am not
interested in the outcome of the action.

Witness my hand this 2nd day of
October 2017.

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PAUL J. FREDERICKSON, CCR, CSR

5 WA CCR 2419 CA CSR 13164

Expiration date: March 31, 2018

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